THE HON'BLE SRI JUSTICE C.V. RAMULU

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+ **W.P.Nos.4797 and 11572 of 2006**

%Dated 22-6-2006

W.P.No.4797 OF 2006

Between:

M/s. Sri Sai Traders, rep.by its Proprietor

Smt.Duddu Bala Tripura Sundari & another … Petitioners

And

The Assistant Supply Officer,

Circle-I, Vijayawada Krishna Distrct & another … Respondents

!Counsel for the Petitioners: SHRI V.H.V.R.R. SWAMY

^Counsel for Respondents: G.P. FOR CIVIL SUPPLIES

<GIST:

> HEAD NOTE:

? Cases referred

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Thursday, 22nd June, 2006

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COMMON ORDER:

In these two Writ Petitions, common questions of fact and law arise for consideration; therefore, they are being disposed of by this common Order.

In both these cases, the rice held by the petitioners was seized by conducting panchanamas on the allegation that the said rice is meant for Public Distribution System (PDS) and it was black marketed; therefore, invoked the provisions of Section 6A of the Essential Commodities Act,1955 (for short 'the Act'). The Writ Petitions are filed seeking to declare the action of the respondents in seizing the rice and initiating the proceedings under Section 6A of the Act as arbitrary and illegal.

Detailed counter affidavits have been filed by respondents 1 and 4 in W.P.No.4797 of 2006 denying the allegations made by the petitioners and supporting the impugned action of the respondents.

Heard both sides.

Admittedly, the rice was taken out of the Essential Commodities Act by way of an Order passed by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi in G.S.R.104(E), dated 15-2-2002, issued in exercise of the powers conferred by Section 3 of the Act. However, the learned Government Pleader submitted that nothing in the said Order dated 15-2-2002 shall affect the operation of the Public Distribution System (Control) Order, 2001 issued by the Central Government and Orders of the State Government issued in pursuance thereof. Thus, according to the learned Government Pleader, the rice is though taken

out from the list of essential commodities, but the rice distributed under Public Distribution System has not been exempted from the application of the Act. Clause 6 of the said Order reads as under:

> "6. Nothing contained in this Order shall affect the operation of the Public Distribution System (Control) Order,2001 issued by the Central Government and orders of the State Governments issued in pursuance thereof."

Whereas, learned counsel for petitioners strenuously contended that once the rice is taken out of the Act, the only course left over for the respondents is to invoke either criminal proceedings or any other provision of law applicable in this regard. It is also their contention that in pursuance of the Central Government's Order dated 15-2-2002, Government of Andhra Pradesh issued a Governmental Order in G.O.Ms.No.79, dated 29-6-2005 rescinding the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order,1966. Therefore, absolutely, there is no restriction on movement of rice in the State of Andhra Pradesh. In fact, the notification issued under Section 3 of the Act, rescinding the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order,1966 issued in G.O.Ms.No.2121, Food and Agriculture (CS.IV) Department, dated 29-6-1966, is subject to the following conditions:

"Provided that such rescission shall not affect:-

a. the previous operation of the said order on anything duly done or suffered thereunder;

b. by any right, privilege, obligation or liability acquired, accrued or incurred under the said order; or

c. any penalty, forfeiture or punishment incurred in respect of any offence committed against the said order; and

d. any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding, on remedy may be instituted, continued or enforced any such penalty, forfeiture or punishment may be imposed as if the relevant said order has not been rescinded."

From a reading of the above, it would indicate that absolutely there is no restriction on movement of rice in the State of Andhra Pradesh and the authorities were supposed to take action against those cases of violation under the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order,1966, but not by invoking the

provisions of Section 6A of the Act. Admittedly, in these two cases, the seizure was effected after 29-6-2005 i.e. much after rescinding the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order,1966. Therefore, there is no scope for invoking Section 6A of the Act against the seized goods of the petitioners. Whereas, learned counsel for the petitioners contended that Clause 6 of the Central Government's Order dated 15-2-2002 must be interpreted strictly to carry out the object of amendment. Further, the Commissioner of Civil Supplies issued a clarification in this regard by his Proceedings dated 12-8-2002, which reads as under:

> "With reference to letter cited, it is clarified that rice millers who indulge in purchase of rice like Food For Work rice, action has to be taken under Criminal Procedure Code as there is no licensing system.
>
> In so far as the Fair Price Shop Dealers are concerned, they are governed by the conditions of the authorization issued under the Andhra Pradesh State PDS Control Order,2001."

According to the petitioners, even assuming that they have purchased or have come into possession of rice meant for 'Food For Work' or 'public distribution system' the only action to be taken in this regard is to initiate criminal proceedings. Learned Government Pleader stated that the above clarification dated 12-8-2002 at the most exempts the 'Food For Work' rice from invoking the provisions of Section 6A of the Act; but, insofar as fair price shop dealers are concerned, they are governed by the conditions of authorization issued under the A.P. State Public Distribution System Control Order,2001. Assuming that the Fair Price Shop dealers are governed by the conditions of authorization; but, in these cases, the petitioners are not fair price shop dealers. Therefore, it has to be seen whether under the A.P. State Public Distribution System Control Order,2001 any action can be taken against the petitioners by invoking the provisions of Section 6A of the Act or any other provisions of the said Act dealing with such contingencies. Learned Government Pleader submitted that sub-clauses (16) and (20) of Clause 2 of the A.P. State Public Distribution System Control Order,2001 defines 'scheduled commodity' and 'public distribution system' as under:

> "(16) 'Scheduled Commodity' means any commodity specified in the schedule to the Order, which is supplied by the State Government or to any authorized fair price shop or establishment for issue to the Consumers.

(20) 'Public Distribution System' means the system for distribution of essential commodities to the ration card holders through the fair price shops, such as rice, wheat, sugar, edible oils, kerosene and such other commodities as are notified by the Central Government under clause (a) of Section 2 of the Act."

Further, Clause 16 of the said Order contemplates power to enter premises, inspect, search and seize stocks of essential commodities, ask questions, require production of documents etc. The said Clause reads as under:

"**16. Power to enter Premises, Inspect, Search and seize stocks of Scheduled Commodities, Ask questions require Production of Documents, etc.,:-**

(i) Any Officer or person authorized by the Government or by the Collector or by the appointing Authority or any Officer of the Revenue Inspector/Checking Inspector/Food Inspector (Civil Supplies), Dy.Tahsildar (Civil Supplies)/Dy.Tahsildar (Revenue) or any Gazetted Officer of Vigilance and Enforcement Department, Andhra Pradesh, Hyderabad, may at all reasonable times inspect any stocks of scheduled commodities, supply documents or books, accounts or other documents pertaining to dealing in scheduled commodities and may for the purpose of such inspections. In case of weighment of Scheduled commodities, the Assistant Legal Metrology Officer appointed by the Weighs and Measures Department is also competent to inspect the Fair Price Shop premises

a. enter the premises of any establishment or shop provided that in exercising the power of entry, due regard shall be paid by such officer or person to the social and religious customs of the occupants of the premises.

b. to summon and enquire any person with the relevant and necessary questions.

c. require the production of any document and take or cause to be taken extracts from or copies of such documents; and

d. take or cause to be taken the weight or measure of the scheduled commodities found in the premises.

(ii) Every person when so required by such officer or person under sub-clause (i) shall allow access to premises, answer all questions to the best of his knowledge and belief, produce the documents in his possession and allow extracts from or copies of any scheduled commodities found in the premises, to be taken.

(iii) Such Officer, may in the course of such inspection search for and seize

any commodity in respect of which he has reasons to believe that any provision made by his order has been or is being contravened.

(iv) The provisions of Section 100 of the Code of Criminal Procedure,1973 relating to search and seizure shall so far as may be, apply to search and seizure under this Order."

Rice, of course, is one of the scheduled commodities, though not an essential commodity, under the Control Orders. Clause 16 of the said Order contemplates that an Officer not below the rank of a Revenue Inspector may at all reasonable times inspect any stocks of scheduled commodities and the concerned person, may for the purpose of such inspection, supply documents or books, accounts or other documents pertaining to dealing in scheduled commodities and. Further, when the Officer so requires, such person under sub-clause (i) shall allow access to the premises, answer all questions to the best of his knowledge and belief, produce the documents in his possession and allow extracts from or copies of any scheduled commodities found in the premises, to be taken. Such Officer may, in the course of such inspection, search for and seize any commodity in respect of which he has reason to believe that any provision made by this Order has been violated or is contravened and the provisions of Section 100 Cr.P.C. relating to search and seizure shall be applicable to search and seizure under this Order. In the entire the A.P. State Public Distribution System Control Order,2001, a contingency of this nature is not contemplated. However, learned Government Pleader submitted that enter the premises of any establishment or shop as provided under Clause 16 of the Control Order,2001 means even the premises of the petitioners and seizing stocks.

Learned Government Pleader has advanced yet another argument saying that since clause 6 of the Central Government's Order dated 15-2-2002 states that nothing contained in that Order shall affect the Public Distribution System rice and the very Order i.e. A.P. State Public Distribution System Control Order,2001 is made under Section 3 of the Act, it must be deemed that the foodgrains seized by the respondent authorities are essential commodities; therefore, the authorities are correct in invoking the provisions of Section 6A of the Act.

I am of the considered opinion that the purpose of Clause 6 of the Order dated

15-2-2002 is that the State Government may have control over the rice required for public distribution system as contemplated under Public Distribution System (Control) Order,2001 and nothing more than that. By Order dated 15-2-2002, in fact, the rice has been taken out of the Control Order as an essential commodity. In the entire Control Order,2001, there is no contingency visualized of this nature. Therefore, the Commissioner of Civil Supplies through his Proceedings dated 12-8-2002 as noticed above, has rightly clarified that against rice millers, who indulge in purchase of rice like 'food for work' rice, criminal action has to be taken, as there is no licensing system. Insofar as fair price shop dealers are concerned, they are governed by the conditions of authorization issued under the A.P. State Public Distribution System Control Order,2001.

According to the respondents, it is the public distribution system rice, which is found to be transported and/or in the possession of the petitioners; therefore, they are at liberty to invoke the criminal proceedings even against public distribution system rice when it is diverted elsewhere with the connivance of the fair price shop dealers. But that itself does not permit the respondents to invoke the provisions of the Essential Commodities Act. As per Clause 16 of the Control Order,2001 rice is only a scheduled commodity, but not an essential commodity to invoke the provisions of the Act. Therefore, the impugned action of the respondents in invoking the provisions of Section 6A of the Act and seizing the rice of the petitioners is without any authority of law and as such, insofar as invoking the provisions of Section 6A of the Act is concerned, it is arbitrary and illegal. May be, seizure is justified since *prima facie* it is the contention of the respondents that the rice seized is meant for public distribution system and it cannot be permitted to do away with the welfare scheme meant for the card holders. As such, the authorities are directed to take appropriate action as per law.

For all the above reasons, the Writ Petitions are allowed holding that the respondents have no power to initiate proceedings under Section 6A of the Act insofar as the stocks of rice seized from the possession of the petitioners is concerned. No order as to costs.

22-6-2006

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